

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 22

HOUSE BILL 2601

AN ACT

AMENDING SECTION 20-1808, ARIZONA REVISED STATUTES; RELATING TO CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-1808, Arizona Revised Statutes, is amended to
3 read:

4 20-1808. Ratio of assets to liabilities; report; rehabilitation
5 of provider

6 A. The provider shall possess assets in the first year of operation
7 equal to at least seventy-five per cent of the unamortized endowment fees
8 plus all other liabilities including long-term debt. The unamortized
9 endowment fees shall be based on life expectancy of purchasers. ~~The ratio~~
10 ~~requirement shall be increased to at least eighty-five per cent by the end of~~
11 ~~the fourth year of operation and to at least one hundred per cent by the end~~
12 ~~of the sixth year of operation, except that the ratio shall never be less~~
13 ~~than the previous year's requirement.~~ THEREAFTER, THE PROVIDER SHALL AT ALL
14 TIMES POSSESS ASSETS IN AN AMOUNT SUFFICIENT TO ASSURE FULL PERFORMANCE OF
15 THE OBLIGATIONS OF THE PROVIDER PURSUANT TO LIFE CARE CONTRACTS INCLUDING ANY
16 RESERVE FUND ESCROW REQUIRED BY THE DIRECTOR PURSUANT TO SECTION 20-1806.

17 B. If revenues or funds including reserves are inadequate or projected
18 to be inadequate pursuant to the annual report or an actuarial report or if
19 the provider does not meet the requirements of subsection A of this section,
20 the director may employ an independent management consultant experienced in
21 the operation of life care facilities, at the expense of the provider, who
22 shall examine the financial structure and operations of the provider and make
23 recommendations on remedial action to the director. The director shall not
24 be bound by such recommendations.

25 C. At any time the director receives notice from the escrow agent that
26 ~~the provisions of section 20-1806 have~~ HAS not been complied with, or at any
27 other time when the director has reason to believe that the provider is in a
28 financially unsound or unsafe condition, or that its condition is such that
29 it may otherwise be unable to fully perform its obligations pursuant to life
30 care contracts, or when the provider fails to implement the director's
31 recommendations as a result of a management consultant's report or when it is
32 obvious to the director that to obtain the services of a financial consultant
33 under subsection B of this section would be futile, the director ~~shall,~~
34 through the attorney general, SHALL apply to the superior court in the county
35 in which the provider's facility is located for an order directing him to
36 assume management and possession of the provider's facility and to
37 rehabilitate the provider to enable it to fully perform its obligation
38 pursuant to life care contracts. The court shall act upon the application
39 upon notice to the provider, and any objection to the petition shall be filed
40 with the court within the time prescribed by such notice.

41 D. If the court upon hearing finds that the provider is in a
42 financially unsound or unsafe condition or that its condition is such that it
43 may otherwise be unable to fully perform its obligations pursuant to life
44 care contracts, the court shall issue an order directing the director to take
45 possession of the property of the provider and to conduct the business

1 thereof, and to take such steps toward removal of the causes and conditions
2 which have made rehabilitation necessary, as the court may direct. The order
3 shall include a provision directing the issuance of a notice of the
4 rehabilitation proceedings to the residents at such facility and to such
5 other interested persons as the court shall direct.

6 E. Appointment of the director to rehabilitate a provider shall
7 authorize the director to:

8 1. Take possession of and preserve, protect and recover any assets,
9 books and records or property of the provider, including claims or causes of
10 action belonging to or which may be asserted by the provider and to deal with
11 such property in his own name in the capacity as director, and purchase at
12 any sale any real estate or other asset upon which the provider may hold any
13 lien or encumbrance or in which it may have an interest.

14 2. File, prosecute and defend or compromise any suit or suits which
15 have been filed or which may thereafter be filed by or against such provider
16 which are deemed by the director to be necessary to protect the provider or
17 the residents or any property affected thereby.

18 3. Take possession of and deposit and invest any of the provider's
19 available funds.

20 4. Pay all expenses of the rehabilitation.

21 5. Exercise such other powers and duties as may be provided by order
22 of the court.

23 6. Appoint managers, supervisors or employees necessary to properly
24 manage and operate the provider and the provider's facility.

25 7. Take possession of and, with the prior approval of the court, sell,
26 exchange, lease, mortgage or otherwise dispose of any property of the
27 provider by public sale, bidding or otherwise.

28 8. With the prior approval of the court, borrow money with or without
29 security for the purpose of facilitating the rehabilitation of the provider.

30 9. Perform all duties of the provider.

31 10. Reject any executory contract to which the provider is a party.

32 11. Withdraw any sums remaining in the escrow account established
33 pursuant to section 20-1806 for the purpose of rehabilitating the provider's
34 facility.

35 F. The court may at any time during a rehabilitation proceeding issue
36 such other instructions or orders as are deemed necessary to aid the director
37 in the rehabilitation proceeding.

38 G. The director, or any interested person upon due notice to the
39 director, at any time may apply to the court for an order terminating the
40 rehabilitation proceedings and permitting the provider to resume possession
41 of its property and the conduct of its business, but no such order shall be
42 granted except when, after a full hearing, the court has determined that the
43 purposes of the proceeding have been fully accomplished and that the facility
44 can be returned to the provider's management without further jeopardy to the
45 residents of the facility, creditors, owners of the facility, and to the

1 public. An order terminating the rehabilitation proceeding shall be based
2 upon a full report and accounting by the director of the conduct of the
3 provider's officers during the rehabilitation and of the provider's current
4 financial condition.

5 H. If at any time the director deems that further efforts to
6 rehabilitate the provider would be useless, he may report to the court and
7 apply for an order of liquidation and dissolution pursuant to title 10,
8 chapter 14, article 3, if a corporation, or may apply for other appropriate
9 relief for dissolving the provider and winding up its affairs. An order
10 directing the liquidation or dissolution of the provider shall act as a
11 revocation of the provider's permit issued pursuant to section 20-1803.

12 I. In connection with the rehabilitation proceedings, the director may
13 appoint one or more special deputy directors of insurance to act for him and
14 may employ such counsel, clerks or assistants as he deems necessary. The
15 compensation of the special deputies, counsel, clerks or assistants and any
16 expenses of taking possession of the provider's facility and of conducting
17 the proceedings shall be set by the director, subject to approval of the
18 court, and shall be paid out of the funds or assets of the provider.

APPROVED BY THE GOVERNOR APRIL 1, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2005.

Passed the House February 28, 2005

Passed the Senate March 24, 2005

by the following vote: 44 Ayes,
15 Nays, 1 Not Voting

by the following vote: 25 Ayes,
5 Nays, 0 Not Voting

[Signature]
Speaker of the House
Norman L. Moore
Chief Clerk of the House

[Signature]
President of the Senate
Chaimin B. Blington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

April, 2005,

at 11:15 o'clock 11 M.

[Signature]
Governor of Arizona

H.B. 2601

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of April, 2005

at 2:23 o'clock P. M.

[Signature]
Secretary of State